

Government of the District of Columbia
UNIFORM LAW COMMISSION



October 20, 2021

The Honorable Phil Mendelson
Chairman
Council of the District of Columbia
The John A. Wilson Building,
1350 Pennsylvania Avenue, NW
Washington, DC 20004

RE: Request for introduction of the Revised Uniform Law on Notarial Acts
Amendment Act of 2021.

Dear Chairman Mendelson:

Pursuant to Rule 401(b)(1) of the Rules of Organization and Procedure for the Council, this is to request, on behalf of the District of Columbia Uniform Law Commission, that you introduce the proposed “Revised Uniform Law on Notarial Acts Amendment Act of 2021,” which would amend D.C. Law 22-189, the Revised Uniform Law on Notarial Acts Act of 2018. The amendments would authorize remote online notarization both by use of secure electronic records and by use of paper documents signed in ink, notarized, and delivered to the parties. The reasons for the request are as follows:

The Uniform Law Commission completed the Revised Uniform Law on Notarial Acts (“RULONA”) in 2018. A key advance was a provision permitting remote notarization using synchronous audio-visual technology. The provision requires use of technology that has robust identity-proofing processes and which enables the notary and remote individual to see and hear each other interactively in real time. RULONA has been widely endorsed by national organizations, including the American Society of Notaries. The remote notarization provision recognizes a rapidly emerging trend among states, which has accelerated during the last couple years, spurred by the COVID-19 pandemic. Today a great majority of the states have permanent laws permitting remote notarization, including Maryland and Virginia. *See* MD Code, State Government § 18-214; VA Code § 47.1-6.1. Only 14 jurisdictions in the country lack such a law, and of these, five have pending legislation to permit remote notarization. The District is one of the few remaining outliers.

The Council did not include RULONA's remote notarization section when it enacted D.C. Law 22-189. Although the Council included a provision authorizing remote notarization in several Coronavirus support acts (currently Section 807 of D.C. Law 24-9, the Coronavirus Support Temporary Amendment Act of 2021), the provision is not self-executing but requires express authorization by the Mayor, which has not been given. So it has never taken effect. In any case, D.C. Law 24-9 is a temporary act and will expire on February 4, 2022.

The proposed Revised Uniform Law on Notarial Acts Amendment Act of 2021 would authorize notaries public to use two distinct types of remote notarization: (1) secure remote online notarization using electronic documents, as provided in the original 2018 RULONA and (2) remote paper notarization, which was added to RULONA this year by the National Conference of Commissioners on Uniform State Laws. The latter provision was added because many persons, while embracing remote notarization, expressed a desire to have tangible records signed in ink and notarized by a notary public and signer who are in different locations. Both processes would utilize secure audio-visual technology and would obviate the need for all parties to the transaction to come to the same location.

The proposed Revised Uniform Law on Notarial Acts Amendment Act of 2021 would substantially benefit District residents who need documents notarized. For example, the owner of property in the District who desires to sell the property but who is physically outside the District could have the necessary documents notarized remotely without the need to travel to the District. Or a District resident who is homebound because of age or illness would be able to have documents notarized without having to undertake an arduous visit to a notary public's office.

A proposed Revised Uniform Law on Notarial Acts Amendment Act of 2021 is being filed with this letter. We would be pleased to answer any questions.

Sincerely,

A handwritten signature in blue ink that reads "James C. McKay, Jr." The signature is fluid and cursive, with the first name "James" being the most prominent part.

James C. McKay, Jr.
Chair
D.C. Uniform Law Commission

cc: Uniform Law Commissioners

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Chairman Phil Mendelson at the request of the
District of Columbia Uniform Law Commission

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend the Revised Uniform Law on Notarial Acts of 2018 to authorize a notary public to certify that a paper copy of an electronic record is an accurate copy of that record; to accept a paper copy of an electronic record that is certified by a notarial officer; and to perform a notarial act for an individual who is not physically present before the notary public, including an individual who is outside the District of Columbia but within the United States and an individual who is outside the United States, through the use of synchronous communication technology to verify the identity of the remote individual, evidenced by an audio-visual recording, or by remote administration of oaths and remote notarization of tangible records evidenced by an audio-visual recording.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this
act may be cited as the "Revised Uniform Law on Notarial Acts Amendment Act of 2021".

Sec. 2. The Revised Uniform Law on Notarial Acts of 2018, effective Dec. 21, 2018 (D.C. Law 22-189; D.C. Official Code § 1-1231.01 et seq.), is amended as follows:

(a) Section 4 is amended by adding the following new subsection (d) at the end thereof:

"(d) A notarial officer may certify that a tangible copy of an electronic record is an accurate copy of the electronic record."

(b) The following new section is added after section 14:

"Sec. 14A. Notarial act performed for remotely located individual.

"(a) In this section:

37 “(1) “Communication technology” means an electronic device or process that:

38 “(A) Allows a notary public and a remotely located individual to

39 communicate with each other simultaneously by sight and sound; and

40 “(B) When necessary and consistent with other applicable law, facilitates

41 communication with a remotely located individual who has a vision, hearing, or speech

42 impairment.

43 “(2) “Foreign state” means a jurisdiction other than the United States, a state, or a

44 federally recognized Indian tribe.

45 “(3) “Identity proofing” means a process or service by which a third person

46 provides a notary public with a means to verify the identity of a remotely located individual by a

47 review of personal information from public or private data sources.

48 “(4) “Outside the United States” means a location outside the geographic

49 boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory,

50 insular possession, or other location subject to the jurisdiction of the United States.

51 “(5) “Remotely located individual” means an individual who is not in the physical

52 presence of the notary public who performs a notarial act under subsection (c).

53 “(b) A remotely located individual may comply with Section 6 by using communication

54 technology to appear before a notary public.

55 “(c) A notary public located in the District may use communication technology to

56 perform a notarial act for a remotely located individual if:

57 “(1) The notary public:

58 “(A) Has personal knowledge under Section 7(a) of the identity of the

59 remotely located individual;

60 “(B) Has satisfactory evidence of the identity of the remotely located
61 individual by oath or affirmation from a credible witness appearing before the notary public
62 under Section 7(b) or this section; or

63 “(C) Has obtained satisfactory evidence of the identity of the remotely
64 located individual by using at least two different types of identity proofing;

65 “(2) The notary public is able reasonably to confirm that a record before the
66 notary public is the same record in which the remotely located individual made a statement or on
67 which the individual executed a signature;

68 “(3) The notary public, or a person acting on behalf of the notary public, creates
69 an audio-visual recording of the performance of the notarial act; and

70 “(4) For a remotely located individual located outside the United States:

71 “(A) The record:

72 “(i) Is to be filed with or relates to a matter before a public official
73 or court, governmental entity, or other entity subject to the jurisdiction of the United States; or

74 “(ii) Involves property located in the territorial jurisdiction of the
75 United States or involves a transaction substantially connected with the United States; and

76 “(B) The act of making the statement or signing the record is not
77 prohibited by the foreign state in which the remotely located individual is located.

78 “(d) A notary public located in the District may use communication technology under
79 subsection (c) to take an acknowledgment of a signature on a tangible record physically present
80 before the notary public if the record is displayed to and identified by the remotely located
81 individual during the audio-visual recording under subsection (c)(3).

82 “(e) The requirement under subsection (c)(2) for the performance of a notarial act with
83 respect to a tangible record not physically present before the notary public is satisfied if:

84 “(1) The remotely located individual:

85 “(A) During the audio-visual recording under subsection (c)(3), signs:

86 “(i) The record; and

87 “(ii) A declaration, in substantially the following form, that is part
88 of or securely attached to the record:

89 “I declare under penalty of perjury that the record of which this declaration is a part or to which
90 it is attached is the same record on which (name of notary public), a notary public, performed a
91 notarial act and before whom I appeared by means of communication technology on (date).

92 “_____

93 “Signature of remotely located individual

94 “_____

95 “Printed name of remotely located individual; and

96 “(B) Sends the record and declaration to the notary public, by first-class
97 United States Mail or delivery by common-carrier or commercial delivery service, not later than
98 3 days after the notarial act was performed; and

99 “(2) The notary public:

100 “(A) In the audio-visual recording under subsection (c)(3), records the
101 individual signing the record and declaration; and

102 “(B) After receipt of the record and declaration from the individual,
103 executes a certificate of notarial act under Section 15, which must include a statement in
104 substantially the following form:

“I (name of notary public) witnessed, by means of communication technology, (name of remotely located individual) sign the attached record and declaration on (date).

“(f) A notarial act performed in compliance with subsection (e) complies with Section 15(a)(1) and is effective on the date the remotely located individual signed the declaration under subsection (e)(1)(A)(ii).

“(g) Subsection (e) does not preclude use of another procedure to satisfy subsection (c)(2) for a notarial act performed with respect to a tangible record.

“(h) A notary public located in the District may use communication technology under subsection (c) to administer an oath to a remotely located individual if, except as otherwise provided by other law of the District, the notary public:

“(1) Identifies the individual under subsection (c)(1);

“(2) Creates or causes the creation under subsection (c)(3) of an audio-visual recording of the individual taking the oath; and

“(3) Retains or causes the retention under subsection (k) of the recording.

“(i) If a notarial act is performed under this section, the certificate of notarial act under Section 15 and the short-form certificate under Section 16 must indicate that the notarial act was performed using communication technology.

“(j) A short-form certificate under Section 16 for a notarial act subject to this section is sufficient if it:

“(1) Complies with rules adopted under subsection (m)(1); or

“(2) Is in the form under Section 16 and contains a statement in substantially the following form:

“This notarial act involved the use of communication technology.

128 “(k) A notary public, a guardian, conservator, or agent of a notary public, or a personal
129 representative of a deceased notary public shall retain the audio-visual recording created under
130 subsection (c)(3) or cause the recording to be retained by a repository designated by or on behalf
131 of the person required to retain the recording. Unless a different period is required by rule
132 adopted under subsection (m)(4), the recording must be retained for at least 10 years.

133 “(l) Before a notary public performs the notary public’s initial notarial act under this
134 section, the notary public must notify the Mayor that the notary public will be performing
135 notarial acts with respect to remotely located individuals and identify the technologies the notary
136 public intends to use. If the Mayor has established standards under subsection (m) and Section
137 27 for approval of communication technology or identity proofing, the communication
138 technology and identity proofing must conform to the standards.

139 “(m) In addition to adopting rules under Section 27, the Mayor may adopt rules regarding
140 performance of a notarial act under this section. The rules may:

141 “(1) Prescribe the means of performing a notarial act involving a remotely located
142 individual using communication technology;

143 “(2) Establish standards for communication technology and identity proofing;

144 “(3) Establish requirements or procedures to approve providers of communication
145 technology and the process of identity proofing;

146 “(4) Establish standards and a period for the retention of an audio-visual recording
147 under subsection (c)(3); and

148 “(5) Prescribe methods for a notary public to confirm under subsections (d) and
149 (e) the identity of a tangible record.

“(n) Before adopting, amending, or repealing a rule governing performance of a notarial act with respect to a remotely located individual, the Mayor shall consider:

“(1) The most recent standards regarding the performance of a notarial act with respect to a remotely located individual promulgated by national standard-setting organizations and the recommendations of the National Association of Secretaries of State;

“(2) Standards, practices, and customs of other jurisdictions that have laws substantially similar to this section; and

“(3) The views of governmental officials and entities and other interested persons.

“(o) By allowing its communication technology or identity proofing to facilitate a notarial act for a remotely located individual or by providing storage of the audio-visual recording under subsection (c)(3), the provider of the communication technology, identity proofing, or storage appoints the Mayor as the provider’s agent for service of process in any civil action in the District related to the notarial act.”

(c) Section 21 is amended by adding the following new section (c) at the end thereof:

“(c) The Office of the Recorder of Deeds may accept for recording a tangible copy of an electronic record containing a notarial certificate as satisfying any requirement that a record accepted for recording be an original, if the notarial officer executing the notarial certificate certifies that the tangible copy is an accurate copy of the electronic record.”

Sec. 3. Conforming amendments.

An Act To establish a code of law for the District of Columbia, approved March 3, 1901, 31 Stat. 1267, chapter 854, is amended as follows:

(1) Section 499 (D.C. Code § 42-401) is amended to read as follows:

“Sec. 499. Effective date of deeds; exception.

“Any deed conveying real property in the District, or interest therein, or declaring or limiting any use or trust thereof, executed and acknowledged and certified as provided in sections 497 (D.C. Code § 42-602), 498 (D.C. Code § 42-101), and 512 (D.C. Code § 42-306), and the Revised Uniform Law on Notarial Acts Act of 2018 (D.C. Law 22-189; effective Dec. 21, 2018) (D.C. Code § 1-1231.01 *et seq.*), as amended by the Revised Uniform Law on Notarial Acts Amendment Act of 2021 (D.C. Law ____; effective ____), and delivered to the person in whose favor the same is executed, shall be held to take effect from the date of the delivery thereof, except that as to creditors and subsequent bona fide purchasers and mortgagees without notice of said deed, and others interested in said property, it shall only take effect from the time of its delivery to the Recorder of Deeds for record.”

(2) Section 499b (D.C. Code § 42-403) is amended to read as follows:

“Sec. 499b. Defective grants recorded on or after the effective date of the Revised Uniform Law on Notarial Acts Amendment Act of 2021.

“Any instrument recorded in the Office of the Recorder of Deeds on or after the effective date of the Revised Uniform Law on Notarial Acts Amendment Act of 2021 (D.C. Law ____; effective ____) shall be effective notwithstanding the existence of any failures in the formal requisites listed in section 499c (D.C. Code § 42-404).”

(3) Section 499c (D.C. Code § 42-404) is amended by amending paragraph (1) of subsection (a) to read as follows:

“(1) An omission of an acknowledgment, defective or improper acknowledgment, or any failure to meet a requirement in the taking of an acknowledgment.”

Sec. 4. Fiscal impact statement.

195 The Council adopts the attached fiscal impact statement as the fiscal impact statement
196 required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December
197 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

198 Sec. 5. Effective date.

199 This act shall take effect following approval by the Mayor (or in the event of veto by the
200 Mayor, action by the Council to override the veto), a 30-day period of Congressional review as
201 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
202 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
203 Columbia Register.